IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.426 OF 2005

The State of Maharashtra .. Applicant
(Orig.Complainant)

V/s.

Shri.Subatra Nikunj De & Anr. .. Respondents

Shri.Y.M.Nakhwa, A.P.P. for the State.
None for respondent No.2

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13TH DECEMBER, 2006

P.C.:

. These Criminal Revision Applications are at the instance of original complainant challenging an order passed by the learned Additional Sessions Judge on 26th May, 2005 in C.R.A.No.8 of 2004 and C.R.A.No.24 of 2004.

. These criminal revision applications were filed by the respondent Nos.1 & 2 herein against the order dated

27th November, 2003 refusing to discharge them from the complaint preferred by the state.

. The learned Additional Sessions Judge has recorded that complaint was filed against accused Nos.1 to 6 for several offences under the Drugs and Cosmetics Act, 1940 along with Sections 120(B), 34 & 109 of the Indian Penal Code. The case against accused No.6 is separated. The concerned Metropolitan Magistrate by an order dated 16th November, 1995 discharged the accused No.1 Anil Vishwanath Patankar. He directed that the charges be framed against accused Nos.2 to 5. He further directed that summons be issued to OM Laboratory and another laboratory by name Chem Med Analytical Laboratory under Section 319 of Cr.P.C.

. So far as the discharge of accused No.1 is concerned, order dated 16th November, 1995 was not challenged before the higher court by the State. The accused No.7 - OM Laboratory submitted an application for recall of the issue process and for discharge. The said application was rejected by the Trial Court. The original accused No.7 preferred Revision Petition No.345 of 2000 which has been allowed on 24th June, 2002. The order of

Trial Judge is thus set aside. This accused No.7 OM Laboratory has been discharged from the Criminal Case. Now accused Nos. 2 to 5 being employees of this Laboratory, applied for discharge. Their application was rejected by the Lower Court and that is how they approached the Revisional Court by the above mentioned revisional applications which have been allowed.

. Having gone through the order passed by the Revisional Court, I am satisfied that the Revisional Court rightly allowed the revision applications. When some of the accused have been discharged from the same case and that order has not been challenged by the state before the higher court and the case of the present respondent Nos.1 & 2 being on par with that of those accused, there is no warrant in issuing process and to summon them. The state cannot pick and choose persons for being tried in a criminal case. When the manufacturer laboratory is discharged, the Revisional Court has rightly observed that there is no warrant in proceeding against its employees.

. I see no reason to interfere with such order in my revisional jurisdiction. More so, when no apparent order or perversity is disclosed. Revision application is

therefore summarily dismissed.

(S.C.Dharmadhikari, J.)